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IN THE
COURT OF APPEALS OF INDIANA

LOUIS S. O'NEAL,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 20A03-0810-CR-486
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE ELKHART CIRCUIT COURT
The Honorable Terry C. Shewmaker, Judge
Cause No. 20C01-0608-FA-64

March 9, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Louis O'Neal appeals the sentence he received following his conviction of Possession of Cocaine With Intent to Deliver Cocaine Weighing More than Three Grams,[1] a class A felony, two counts of Dealing in Cocaine, one as a class A felony and one as a class B felony,[2] Unlawful Possession of A Handgun By A Serious Violent Felon,[3] a class B felony, and Possession Of At Least Ten Pounds of Marijuana With Intent to Deliver,[4] a class C felony. O'Neal presents the following restated issue for review: Was his sentence inappropriate?

We affirm.

The facts admitted by O'Neal in entering into his guilty plea are that on July 31, 2006, he sold, delivered, or transferred possession of at least three grams of cocaine to another person. On August 8, 2006, he (1) possessed at least three grams of cocaine with the intent to deliver it; (2) delivered cocaine to another person; (3) possessed a handgun despite a previous serious violent felony conviction; and (4) possessed marijuana in the amount of ten pounds or more with the intent to sell, transfer, or deliver it to another person.

On August 14, 2006, he was charged under Count 1 with felony possession of cocaine, under Counts 2 and 3 with dealing in cocaine, under Count 4 with unlawful possession of a firearm by a serious violent felon, and under Count 5 with felony possession of marijuana. He later agreed to plead guilty as charged except for Count 3, where he pleaded guilty to the handgun offense as a class B felony, rather than a class A felony as originally charged. The

[1] Ind. Code Ann. § 35-48-4-1 (b)(1) (West, PREMISE through 2008 2nd Regular Sess.).
[2] I.C. § 35-48-4-1 (West, PREMISE through 2008 2nd Regular Sess.).
[3] Ind. Code Ann. § 35-47-4-5 (West, PREMISE through 2008 2nd Regular Sess.).
[4] I.C. § 35-48-4-10(b)(2) (West, PREMISE through 2008 2nd Regular Sess.).

plea agreement called for a maximum executed sentence of forty years. At sentencing, the court found as mitigating factors that O'Neal has slight mental health issues, has a substance addiction problem, and has accepted responsibility for his criminal conduct. The court set out the aggravating circumstances as follows:

> [T]he Court notes aggravating circumstances to be the fact that the Defendant has three or four prior felony convictions for delivery of controlled substances, there are multiple counts in this action, and the Defendant's criminal history consists of three or four felonies and two failures to appear evidence unwillingness or inability to conform his conduct to the requirements of law.

Appellant's Appendix at 23. The court imposed forty-year sentences for each of Counts 1 and 2, ten-year sentences for each of Counts 3 and 4, and a four-year sentence for Count 5. All sentences were to run concurrently, for a total executed sentence of forty years.

O'Neal contends his sentence is inappropriate. We have the constitutional authority to revise a sentence if, after considering the trial court's decision, we conclude the sentence is inappropriate in light of the nature of the offense and character of the offender. Ind. Appellate Rule 7(B); *Corbin v. State*, 840 N.E.2d 424 (Ind. Ct. App. 2006). "We recognize, however, the special expertise of the trial courts in making sentencing decisions; thus, we exercise with great restraint our responsibility to review and revise sentences." *Scott v. State*, 840 N.E.2d 376, 381 (Ind. Ct. App. 2006), *trans. denied*. O'Neal bears the burden on appeal of persuading us that his sentence is inappropriate. *Childress v. State*, 848 N.E.2d 1073 (Ind. 2006).

With regard to the nature of the offense, O'Neal asks that we focus on the facts that there in "no indication that [he] gave police any difficulty and he provided helpful

information concerning his acquisition of one of the handguns." *Appellant's Brief* at 9. Moreover, he notes that "the offenses did not involve *per se* physical injury or property loss." *Id*. These assertions are true, but we cannot ignore an observation made by the trial court that he committed not one or two felony offenses, but five. Although no individual offense was particularly egregious in its own right, the sheer number of serious felony offenses committed in these incidents, in the aggregate, is troubling.

Turning now to O'Neal's character, he emphasizes the fact that he accepted responsibility for his actions, which is indeed a positive reflection on his character, as are the other mitigating circumstances found by the trial court, i.e., his mild mental health issues and addiction problem. These factors, however, are entirely negated by what we deem to be the most telling reflection of O'Neal's character, which is his extensive criminal history. O'Neal spent more years in prison during the 1990s than out of prison. Those offenses also were drug dealing offenses. It would seem that the time spent in incarceration did nothing to reform O'Neal's propensity to traffic in illegal drugs. Notwithstanding an apparently supportive family, O'Neal persists in engaging in serious criminal behavior.

Having reviewed the record, we conclude that the forty-year sentence imposed by the trial court is appropriate in light of the nature of the offense and the character of the offender.

Judgment affirmed.

MAY, J., and BRADFORD, J., concur